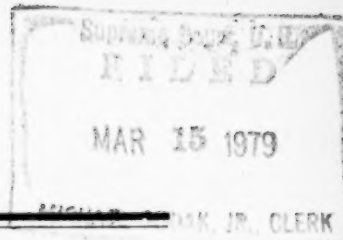


No. 78-1142



In the Supreme Court of the United States

OCTOBER TERM, 1978

HOWARD G. REAMER, PETITIONER

v.

UNITED STATES OF AMERICA

***ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT***

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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**MEMORANDUM FOR THE UNITED STATES
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Petitioner contends (Pet. 6-9) that the district court improperly limited cross-examination of a prosecution witness.

1. Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted on ten counts of mail fraud, in violation of 18 U.S.C. 1341. He was sentenced to concurrent five-year terms of imprisonment on each count. The court of appeals affirmed (Pet. App. 1a-4a).

The evidence at trial showed that petitioner, a lawyer, used "runner[s]" to obtain clients who had been in automobile accidents (Pet. App. 2a). Petitioner generally sent these clients to a chiropractor, Dr. Sobkov, or one of two doctors, Dr. Perkal or Dr. Washington.¹ Sobkov

¹Each of the three had previously been convicted of participating in insurance fraud schemes similar to petitioner's.

testified that he had periodic conversations with petitioner in which petitioner requested that he backdate and inflate bills and in which petitioner stressed the necessity of keeping the bills in line with the liability and property damage (Tr. 1460-1467). All three admitted sending inflated bills to petitioner and they stated that petitioner would "cut" the bills, retaining a portion of the proceeds for himself (Tr. 1250, 1459-1460). Insurance companies, relying on the falsified medical bills and reports mailed by petitioner, made excessive settlements (Pet. App. 2a).

2. Petitioner contends (Pet. 6-9) that the district court improperly limited defense cross-examination of Sobkov.

After agreeing to cooperate with the government, Sobkov compiled a list of patients who had been referred to him by petitioner, which indicated the approximate number of visits Sobkov had fraudulently claimed for each patient (Tr. 1604, 1691). Using this list, postal inspectors interviewed petitioner's clients and obtained sworn statements confirming that petitioner had submitted false medical bills and reports (Pet. App. 2a). As a result of these interviews, some of the clients also testified at trial (Pet. App. 2a-3a). The government treated the list as an investigatory tool only, and did not introduce the list or rely on it at trial.

Petitioner, however, did introduce the list and attempted to cross-examine Sobkov about it, over the government's objection that the list was merely an investigatory tool (Tr. 1613, 1621). Petitioner initially told the court that he wanted to give Sobkov the list and then, after also giving him a file from which an item on the list was prepared, to question him about the item (Tr. 1622). The court agreed to this procedure. After questioning Sobkov generally about his preparation of the list, however, petitioner changed this position and objected to providing Sobkov with a copy of the list during questioning. Instead, petitioner sought to have Sobkov

recreate the list on the witness stand using only the raw files (Tr. 1631-1632). The court rejected this procedure.

The court properly ruled that Sobkov should be allowed to refer to the list, as originally agreed. The accuracy of the list was at best a collateral matter, since the government did not claim that the list was reliable. Indeed, the district court would have been entirely justified in refusing to permit any cross-examination of Sobkov concerning the accuracy of the list. But since the court permitted the defense to attack Sobkov's credibility in this manner, Sobkov was entitled to see what he was defending. It would have been unfair to require him to reconstruct from raw data, and under pressure of cross-examination, figures that he initially took two days to prepare. Any difficulty he might have experienced might have been unjustifiably construed by the jury as reflecting on his veracity, even if it was entirely attributable to the conditions under which Sobkov would be required to attempt the reconstruction. The court therefore acted entirely within its discretion in limiting cross-examination to avoid such misleading results. Fed. R. Evid. 611(a)(1), (2), (3).

Further, since petitioner was in effect proposing a time-consuming experiment that at most might have demonstrated only that Sobkov could not reproduce his calculations under pressure, and that might have taken many hours of court time, the court was justified in denying petitioner's request in the interest of the expeditious and orderly conduct of the trial. Fed. R. Evid. 403. See also *United States v. Carrion*, 463 F. 2d 704, 707 (9th Cir. 1972).²

²Unlike *Davis v. Alaska*, 415 U.S. 308 (1974), and *Alford v. United States*, 282 U.S. 687 (1931), upon which petitioner relies (Pet. 6-7), the line of questioning that petitioner attempted to pursue here could not conceivably have done "[s]erious damage to the strength of the [government's] case" (415 U.S. at 319). The accuracy of the list was

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

MARCH 1979

merely a collateral issue, and petitioner was not precluded from presenting any significant facts about Sobkov to the jury. Rather, he was simply prevented from undertaking an experiment that might or might not have reflected on Sobkov's credibility.